

UNITED STATES DEPARTMENT OF STATE  
BUREAU OF POLITICAL MILITARY AFFAIRS  
WASHINGTON, D.C. 20520

In the Matter of:

Air Shunt Instruments, Inc.

A California Corporation

Respondent

CONSENT AGREEMENT

WHEREAS, the Office of Defense Trade Controls Compliance ("DTCC"), Directorate of Defense Trade Controls, Bureau of Political-Military Affairs, U.S. Department of State ("Department") has notified Air Shunt Instruments, Inc., ("Respondent") of its intent to institute an administrative proceeding pursuant to section 38 of the Arms Export Control Act, as amended ("AECA") (22 U.S.C. § 2778), and its implementing regulations, the International Traffic in Arms Regulations ("ITAR") (22 C.F.R. Parts 120-130);

WHEREAS, the Respondent has reviewed the Proposed Charging Letter and this Consent Agreement, fully understands these documents, and enters into this Consent Agreement voluntarily and with full knowledge of its rights;

WHEREAS, the Respondent, without admitting or denying the allegations in the Proposed Charging Letter, wishes to settle and dispose of all potential civil charges, penalties and sanctions set out in and

arising from the Proposed Charging Letter by entering into this Consent Agreement;

WHEREAS, the Respondent agrees that if the Department finds that this Consent Agreement was negotiated based on the Respondent having knowingly provided materially false or misleading information to the Department, the Department may revoke this Consent Agreement and the related administrative order ("Order") and bring additional charges against the Respondent. Additionally, the Respondent understands that a violation of this Consent Agreement is considered a violation of the Order; and

WHEREAS, the Department and the Respondent agree to be bound by this Consent Agreement and the Order to be entered by the Assistant Secretary of State, Verification, Compliance and Implementation.

Now, WHEREFORE, the Department and the Respondent agree as follows:

#### Parties

(1) The Parties to this Consent Agreement are the Department and the Respondent, including the Respondent's operating divisions and subsidiaries and their assignees and successors, and in the event of reorganization, the terms of this agreement will follow and apply to all affected entities or units.

#### Jurisdiction

(2) The Department has jurisdiction over the Respondent under the AECA and the ITAR in connection with the matters identified in the Proposed Charging Letter.

#### Strengthened Compliance Policies, Procedures, Training

(3) Respondent, reflecting its commitment to conduct its business in full compliance with the AECA and the ITAR, and in order to ensure, in particular, that there are no unauthorized exports of ITAR-controlled defense articles or technical data, agrees to implement the remedial measures outlined herein and such additional measures as may be

mutually agreed upon by Respondent and the Director, DTCC, and agrees further that these measures will remain in effect for thirty (30) months, subject to the terms and conditions below, as part of this Consent Agreement entered into with the Department. Respondent agrees that these measures will be incorporated into any future Respondent business acquisitions that are involved in the design, manufacture, sale or export of ITAR-controlled defense articles, technical data and defense services immediately after the acquisition. Further, if Respondent is sold or if Respondent sells one of its business units or divisions, Respondent agrees to notify DTCC sixty (60) days prior to such sale, and further to notify the purchaser in writing, and to require the purchaser to acknowledge in writing, prior to the sale that the purchaser will be bound by the terms and conditions of this Consent Agreement. Respondent acknowledges and accepts its obligation to maintain effective export control oversight, infrastructure, policies and procedures for its AECA/ITAR-regulated activities.

(4) Under this Consent Agreement, Respondent shall ensure that adequate resources are dedicated to ITAR compliance, and Respondent will establish policies and procedures for all Respondent employees with responsibility for AECA and ITAR compliance to address lines of authority, staffing increases, performance evaluations, career paths, promotions and compensation.

(5) Within twelve (12) months of the date of the Order, Respondent will have instituted strengthened corporate export compliance procedures focused principally on Respondent's business operations such that: (a) all Respondent employees engaged in ITAR-regulated activities are familiar with the AECA and the ITAR, and their own and Respondent's responsibilities thereunder; (b) all persons responsible for supervising those employees are knowledgeable about the underlying policies and principles of the AECA and the ITAR; and (c) there are records indicating the names of employees, trainers, and level and area of training received (e.g., providing technical data, use of public domain information in performing defense services, applicability of ITAR to foreign origin defense articles).

## Penalty

(6) The Respondent agrees that it shall pay in fines and in remedial compliance measures an aggregate civil penalty of one hundred thousand dollars (\$100,000) in complete settlement of alleged civil violations pursuant to section 38 of the AECA and the ITAR, as set forth in the Proposed Charging Letter. The Respondent agrees to waive its rights to raise the defense of Statute of Limitations with regard to the collection of the civil penalty imposed by this Consent Agreement, and that the Statute of Limitations shall be tolled until the last payment is made. The civil penalty shall be payable as follows:

- a) A penalty of one hundred thousand dollars (\$100,000) is hereby assessed, but this amount will be suspended in accordance with the following:
  - 1) Seventy thousand dollars (\$70,000) will be suspended on the condition that Respondent has already applied this amount to self-initiated, pre-Consent Agreement remedial compliance measures, determined by DTCC as set forth in paragraphs (6)(b)&(c) below.
  - 2) The remaining thirty thousand dollars (\$30,000) will be suspended on the condition that the Respondent applies this amount to Consent Agreement-authorized remedial compliance measures, determined by DTCC as set forth in paragraphs (6)(b)&(c) below. Respondent will apply this remaining thirty thousand dollars (\$30,000) over a two year period from the date of the Order for the purpose of defraying a portion of the costs associated with the remedial compliance measures specified in this Consent Agreement.
- b) In accordance with paragraph (6)(c), the Respondent's President will conduct a review of Respondent's expenditures for the compliance measures referenced in paragraphs (6)(a)(1)&(2), and provide the results of the review to DTCC. DTCC will determine from that review if the expenditures claimed by the Respondent to date were spent for self-initiated, pre-Consent Agreement remedial compliance measures or Consent Agreement-authorized remedial compliance costs. To the extent that DTCC

determines that expenditures claimed or any portion thereof were used for self-initiated, pre-Consent Agreement remedial compliance measures or Consent Agreement-authorized remedial compliance costs, such amounts will be credited against the suspended penalty amounts outlined in (6)(a)(1)&(2), respectively.

c) Specifically, the Respondent's President will provide to DTCC no later than six (6) months from the date of the Order for verification and approval an itemized accounting of all self-initiated, pre-Consent Agreement remedial compliance measures and Consent Agreement-authorized remedial compliance expenditures, to include those expenditures claimed against suspended penalties, showing specifics of how money was used to strengthen compliance within the terms of this Consent Agreement. The remaining portion of the suspended penalty outlined in paragraph (6)(a)(1), if any, shall not be suspended and shall be paid as a cash penalty. Any remaining portion at that time of the suspended penalty outlined in paragraph (6)(a)(2) shall be used for additional Consent Agreement-authorized remedial compliance costs, including auditing services. The Respondent shall then at twenty-four (24) months from the date of the Order provide to DTCC for verification and approval an itemized accounting of all Consent Agreement-authorized remedial compliance expenditures. The Respondent shall have twenty-four (24) months from the date of the Order to claim and use any remaining portion of the thirty thousand dollar (\$30,000) suspended penalty referenced in paragraph (6)(b)(2) on Consent Agreement-authorized remedial compliance costs. Any remaining portion at that point of the suspended penalty outlined in paragraph (6)(a)(2) shall be paid as a cash penalty.

(7) Respondent is precluded from applying any portion of the one hundred thousand dollar (\$100,000) penalty set forth in paragraph (6) as costs in any contract with any agency of the U.S. Government or any other contract where the result would be the application of any portion of the one hundred thousand dollar (\$100,000) penalty as costs in any contract with any agency of the U.S. Government. Respondent agrees that the one hundred thousand (\$100,000) penalty: (a) will be treated as expressly unallowable costs under the Federal Acquisition Regulations;

(b) will not be recovered or sought to be recovered as allowable costs, either directly or indirectly under any federal prime contract, grant or subcontract; and (c) will not be taken as a federal tax deduction. In the event Respondent violates these prohibitions, the Department will deem it a "failure to apply funds appropriately for the required purpose."

(8) Any failure to apply funds appropriately for the required purpose, or to provide a satisfactory accounting shall result in a lifting of the suspension, in which case the Respondent shall be required to pay immediately to the Department the amount of the suspended portion of the penalty, less any amounts the Department deems to have been properly applied and accounted for expenditures in compliance with this Consent Agreement.

#### Defense Services and Defense Articles

(9) The Respondent, its subsidiaries, and other affiliates acknowledge and accept the authority of the Department to designate what is a defense article and a defense service, and that the ITAR requires written authorization before such articles or services are exported, regardless of whether the underlying defense article is used in a commercial system or product.

#### Debarment

(10) The Respondent has acknowledged the seriousness of the violations cited in the Proposed Charging Letter. The Respondent has cooperated with the Department's investigation, expressed regret for these activities and taken steps to improve its compliance programs. It has also undertaken to make amends by agreeing to a civil penalty, and implementing the additional remedial compliance actions specified in this Consent Agreement. For these reasons, the Department has determined not to impose an administrative debarment of Respondent based on the civil charges in the Proposed Charging Letter at this time. The Department reserves all rights to impose additional sanctions, including debarment under the ITAR, against the Respondent, any subsidiary or other affiliate over which the Respondent exercises control, if it does not fulfill the provisions of the Consent Agreement or is responsible for other compliance or law enforcement issues under the AECA, or under other statutes enumerated in § 120.27 of the ITAR.



### On-site Reviews by the Department

(11) For the purpose of assessing compliance with the provisions of the AECA, the ITAR and future munitions licenses and other authorizations, the Respondent agrees to arrange and facilitate, with minimum advance notice, on-site reviews by the Department while this Consent Agreement remains in effect.

### Audits

(12) Respondent shall have an audit conducted twelve (12) months from the date of the Order by an outside consultant with expertise in AECA/ITAR matters, approved in advance by the Director, DTCC. The audit shall provide a thorough assessment of the effectiveness of the Respondent's implementation of all measures set forth in this Consent Agreement with focus on those actions undertaken to address the compliance problems identified in the Proposed Charging Letter, the policies, procedures and training established by Respondent, and such other areas as may be identified by the Respondent and/or Director, DTCC. Additionally, the audit will assess the overall effectiveness of Respondent's ITAR compliance programs. Respondent shall have another audit conducted twenty-four (24) months from the date of the Order by an outside consultant with expertise in AECA/ITAR matters, approved in advance by the Director, DTCC. This second audit shall provide a thorough assessment of whether Respondent addressed the compliance recommendations from the initial report.

(13) Specifically, within ten (10) months of the date of the Order, a draft audit plan and name(s) of potential consultant(s) will be submitted to the Director, DTCC for review and comment. Within twelve-months (12) of the date of the Order, the first audit will be completed and a written report containing recommendations for improvements with respect to Consent Agreement measures, or compliance with the AECA or the ITAR more generally will be submitted by Respondent to the Director, DTCC along with Respondent's plan on how it will address those recommendations. Subsequently, within twenty-four (24) months of the date of the Order, Respondent shall have the second audit conducted by the same or another outside consultant, approved in advance by the

Director, DTCC, to confirm whether Respondent addressed the compliance recommendations from the initial report.

Understandings:

(14) No agreement, understanding, representation or interpretation not contained in this Consent Agreement may be used to vary or otherwise affect the terms of this Consent Agreement or the Order, when entered, nor shall this Consent Agreement serve to bind, constrain, or otherwise limit any action by any other agency or department of the United States Government with respect to the facts and circumstances addressed in the Proposed Charging Letter. Specifically, the Respondent acknowledges and accepts that there is no understanding expressed or implied through this Consent Agreement with respect to a final decision by the Department of State concerning export licenses or other U.S. Government authorizations.

(15) The Respondent acknowledges the nature and seriousness of the offenses charged in the Proposed Charging Letter, including the potential risk of harm to the national security and foreign policy interests of the United States. If this Consent Agreement is not approved pursuant to an Order entered by the Assistant Secretary for Political-Military Affairs, the Department and the Respondent agree that they may not use this Consent Agreement in any administrative or judicial proceeding, and that the parties shall not be bound by the terms contained in this Consent Agreement.

(16) The Department agrees that, upon signing of the Order, this Consent Agreement resolves with respect to the Respondent the civil penalties or administrative sanctions with respect to violations of § 38 of the AECA or the ITAR arising from facts that have been identified in the Proposed Charging Letter.

Waiver

(17) The Respondent waives, upon the signing of the Order, all rights to seek any further steps in this matter, including an administrative hearing pursuant to Part 128 of the ITAR. The Respondent also waives any such rights with respect to any additional penalty (with the exception of any suspension or debarment action) assessed by the Director, DTCC in



connection with an alleged material violation of this Consent Agreement (any such additional penalty imposed will be limited to one hundred thousand dollars (\$100,000)) except as follows: In the event that the Director, DTCC determines that the Respondent has materially violated this Consent Agreement and imposes such additional penalty, and the Respondent disputes such determination, the Respondent may appeal such determination to the Assistant Secretary for Political-Military Affairs of the Department, and the decision of the Assistant Secretary for Political-Military Affairs shall be the final determination in the matter, which may not be appealed. The Respondent also waives the right to contest the validity of this Consent Agreement or the Order, including in any action that may be brought for the enforcement of any civil fine, penalty or forfeiture in connection with this Consent Agreement or Order.

#### Certification

(18) Three months prior to the thirty (30) month anniversary of the date of the Order, the Respondent shall submit to the Director, DTCC a written certification that all aspects of this Consent Agreement and the Annex have been implemented and that Respondent's export compliance program has been assessed, and that Respondent certifies that this export compliance program is adequate to identify, prevent, detect, correct and report violations of the AECA and the ITAR. The Consent Agreement shall remain in force beyond the thirty (30) month term until such certification is submitted and the Director, DTCC determines based on this certification and other factors that all compliance measures set forth in this Consent Agreement have been implemented, and that the Respondent's ITAR compliance program appears to be adequate to identify, prevent, detect, correct and report violations of the AECA and the ITAR.

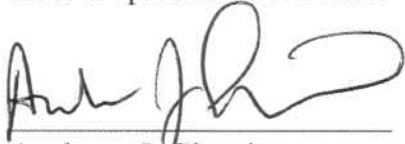
#### Documents to be made public

(19) The Respondent understands that the Department will make this Consent Agreement, the Proposed Charging Letter and the Order, when entered, available to the public.

When Order Becomes Effective

(20) This Consent Agreement shall become binding on the Department only when the Assistant Secretary for Political-Military Affairs approves it by entering the Order, which will have the same force and effect as a decision and Order issued after a full administrative hearing on the record.

U.S. Department of State



Andrew J. Shapiro  
Assistant Secretary,  
Bureau of Political-Military Affairs

7/8/09

Date

Air Shunt Instruments, Inc.



Hagop Nakkashian  
President

6/29/09

Date